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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,146	02/24/2004	Elizabeth Stanley	ES-1001	5024

7590 06/28/2005  
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EXAMINER

GELLNER, JEFFREY L

ART UNIT PAPER NUMBER

3643

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/786,146

Applicant(s)

STANLEY, ELIZABETH

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Specification***

The disclosure is objected to because of the following informalities:

In the "Description of the Drawings" section the "Fig. 6" paragraph should be changed to reflect that there is not Fig. 6 but rather --Figs. 6A-6B--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 8, the language "means for connecting" is indefinite because, since the claim is a method claim, the language should use --step for--.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-3 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Allen (US 4,700,507).

As to claims 1 and 8, Allen discloses a plant support and container (Figs. 1-5) comprising an enclosure (1 of Fig. 1) generally cylindrical having open ends and side portions (portions shown in Fig. 8), each side portion being configured to accept and surround a plant (Figs. 1 and 4), the side portion being secured by means (6 and 7 of Fig. 3) to keep the side portions in place so as to support the plant. The support of Allen inherently performs the method steps recited in claim 8.

As to claim 2, Allen further discloses a plurality of wall sections (shown in Fig. 4) that cooperate to define a substantially continuous shape periphery, base, and upper edge (Fig. 1); and a means for cooperatively engaging each one of the plurality of wall sections to at least one other section (Figs. 3-5).

As to claim 3, Allen further discloses a base with a flange (shown in Figs. 4 and 5), the flange comprising at least one aperture (9 of Figs. 4 and 5).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen (US 4,700,507) in view of Pattyn (US 5,878,528).

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As to claim 4, Allen discloses a support for upwardly oriented foliage (Figs. 1-5) comprising an plurality of wall sections (shown in Figs. 4 and 5) defining a substantially continuous shape periphery (Figs. 1 and 4), base, and upper edge; and a means for fastening (6 and 7 of Fig. 3) one of the plurality of wall sections to at least one other wall section (Figs. 3-5). Not disclosed is the at least one aperture disposed in each of the plurality of wall sections. Pattyn, however, discloses a support with apertures in each of the plurality of wall sections (shown in Fig. 3 and implied in Fig. 4). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the support of Allen by using the fastening means of Pattyn so as to use a vandal-resistant type of fastener (see abstract of Pattyn).

As to claim 5, Allen as modified by Pattyn further discloses a base with a flange (should in Figs. 4 and 5 of Allen), the flange comprising at least one aperture (9 of Figs. 4 and 5 of Allen).

As to claim 6, Allen discloses a support for upwardly oriented foliage (Figs. 1-5) comprising an plurality of wall sections (shown in Figs. 4 and 5) defining a substantially continuous shape periphery (Figs. 1 and 4), base, and upper edge; Not disclosed is the at least one aperture disposed in each of the plurality of wall sections and a fastening means that engages the aperture. Pattyn, however, discloses a support with apertures in each of the plurality of wall sections (shown in Fig. 3 and implied in Fig. 4) and a fastening means (38 of Fig. 4). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the support of Allen by using the fastening means of Pattyn so as to use a vandal-resistant type of fastener (see abstract of Pattyn).

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As to claim 7, Allen as modified by Pattyn further discloses a base with a flange (should in Figs. 4 and 5 of Allen), the flange comprising at least one aperture (9 of Figs. 4 and 5 of Allen).

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Popham and Desrousseaux disclose in the prior art various supports with a plurality of wall sections.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey L. Gellner

Primary Examiner

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